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HILLAIR CAPITAL MANAGEMENT LLC

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re  
SCOOBEEZ, INC., a California corporation,  
  
Debtor and Debtor in  
Possession.

Case No. 2:19-bk-14989-WB

Chapter 11

(Related Case Nos. 2:19-bk-14991-BB  
and 2:19-bk-14997-BR)

**HILLAIR CAPITAL MANAGEMENT'S  
NOTICE OF NON-CONSENT TO USE  
OF CASH COLLATERAL BY THE  
DEBTOR**

**TO THE HONORABLE JULIA BRAND, UNITED STATES BANKRUPTCY JUDGE,  
THE DEBTOR, ITS COUNSEL AND ALL PARTIES IN INTEREST:**

Hillair Capital Management LLC and its affiliates (collectively, “Hillair”) is the senior secured creditor of Scoobeez, Inc., a California corporation, debtor in the above-captioned chapter 11 bankruptcy case (“Scoobeez”), and its affiliated debtors, Scoobeez Global, Inc., an Idaho corporation (formerly known as ABT Holdings, Inc.) (“Scoobeez Global”) and Scoobur, LLC, a California limited liability company (“Scoobur”) (collectively, the “Debtors”). On April 30, 2019, Scoobeez Global filed its own chapter 11 case designated as *In re Scoobeez Global, Inc.*, Case No. 2:19-bk-14991-BB (Bankr. C.D. Cal.), and Scoobur filed its own chapter 11 case designated as *In re Scoobur, LLC*, Case No. 2:19-bk-14997-BR (Bankr. C.D. Cal.). As of the filing of this Notice of Non-Consent, the Debtors have yet to file any motions for joint administration or motions to transfer the subsequently filed cases to Judge Julia Brand as the presiding judge over the low-numbered case.

**A. The Debtors’ Secured Obligations to Hillair Capital Management.**

On or about October 7, 2016, Scoobeez Global and Hillair entered into and executed that certain Securities Purchase Agreement (the “First SPA”). Under the First SPA, Scoobeez Global agreed to sell and Hillair agreed to buy an aggregate amount of “Debentures” issued by Scoobeez Global totaling \$5,800,000. The definition of Debentures in the First SPA is that certain 8% Senior Secured Convertible Debenture Due October 1, 2018. On or about October 7, 2016, Scoobeez Global issued to Hillair its 8% Senior Secured Convertible Debenture Due October 1, 2018 (the “First Debenture”). Under the First Debenture, Scoobeez Global agreed to pay Hillair the principal sum of \$5,800,000 on October 1, 2018.

On or about January 30, 2017, Scoobeez Global and Hillair entered into and executed that certain Securities Purchase Agreement (the “Second SPA”). Under the Second SPA, Scoobeez Global agreed to sell and Hillair agreed to buy an aggregate amount of “Debentures” issued by Scoobeez Global totaling \$8,584,000. The definition of Debentures in the Second SPA is that certain 8% Senior Secured Convertible Debenture Due January 1, 2019. Under the Second SPA, on or about January 30, 2017, Scoobeez Global issued to Hillair its 8% Senior Secured

1 Convertible Debenture Due January 1, 2019 (hereinafter referred to as the “Second Debenture”).

2 Under the Second Debenture, Scoobeez Global agreed to pay Hillair the principal sum of  
3 \$8,584,000 together with all other interest and charges due thereunder at Maturity on or before  
4 January 1, 2019 (the “Maturity Date”). The Second Debenture includes the obligations of  
5 Scoobeez Global to Hillair due under the First Debenture.

6 On or about October 7, 2016, Scoobeez and Scoobur each entered into and executed that  
7 certain Subsidiary Guarantee in favor of Hillair. Pursuant to the terms of the Subsidiary  
8 Guarantee, Scoobeez and Scoobur each jointly and severally, and unconditionally guaranteed the  
9 complete repayment of Scoobeez Global’s obligations to Hillair no matter when incurred.

10 To secure repayment of all obligations owing to Hillair, on or about October 7, 2016,  
11 Scoobeez Global, Scoobeez and Scoobur each, jointly and severally, executed a Security  
12 Agreement. The Security Agreement granted Hillair a security interest in essentially all of the  
13 assets of Scoobeez Global, Scoobeez and Scoobur. Hillair duly perfected its security interest in  
14 the Collateral by filing UCC-1 financing statements as follows: (a) as to Scoobeez Global, a  
15 financing statement was filed with the Idaho Secretary of State on October 11, 2016, as File No.  
16 B-2016-1183112-1; (b) as to Scoobeez, a financing statement was filed with the California  
17 Secretary of State on October 11, 2016 as File No. 16-7550581531; (c) as to Scoobur, a financing  
18 statement was filed with the California Secretary of State on October 11, 2016 as file no. 16-  
19 7550581210.

20 There is due, owing and unpaid to Hillair from the Debtors the principal sum of  
21 \$11,153,098, plus accrued and accruing unpaid interest, late charges, together with other  
22 miscellaneous charges set forth in the Second Debenture.

23 **B. Hillair’s Non-Consent to Use of Cash Collateral.**

24 Cash collateral is defined in section 363(a) of Bankruptcy Code as “cash . . . or cash  
25 equivalents . . . whenever acquired in which the estate and an entity other than the estate have an  
26 interest and includes the proceeds . . . of property subject to a security interest as provided in  
27 section 552(b) . . . .” 11 U.S.C. § 363(a). Based upon the Security Agreement referenced above,  
28 all cash or cash equivalents currently in the Debtors’ possession, including all post-petition

1 proceeds of the prepetition collateral, constitute cash collateral in which Hillair has an interest.

2 Under section 363(c)(2) of the Bankruptcy Code, the Debtors are prohibited from using  
3 any of the cash collateral without Hillair's consent or an order of the Bankruptcy Court  
4 authorizing such use. Previously, Hillair advised the Debtors' bankruptcy counsel that it did not  
5 consent and has not consented, whether expressly or implicitly, to the use of the cash collateral by  
6 the Debtors. Further, under section 363(c)(4) of the Bankruptcy Code, Hillair requires that the  
7 Debtors segregate and account to Hillair for the cash collateral in their possession, custody or  
8 control.

9 Since Hillair does not consent to the Debtors' use of its cash collateral, section 363(e) of  
10 Bankruptcy Code provides that in such circumstance, the Debtors can use cash collateral only if  
11 they can provide "adequate protection" of Hillair Capital Management's interest in the cash  
12 collateral. *See* 11 U.S.C. § 363(c). "Adequate protection" is intended to safeguard Hillair Capital  
13 Management's constitutional right to have the value of its secured claim, as it existed on the  
14 petition date, preserved. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S.  
15 365, 370 (1988).

16 Section 361 of Bankruptcy Code provides three non-exclusive means of providing  
17 adequate protection. These alternatives include (i) requiring the Debtors to make a cash payment  
18 or periodic cash payments to the extent of a decrease in the value of the property; (ii) providing  
19 an additional or replacement lien to the extent of a decrease in the value of the property; or  
20 (iii) granting other relief that will result in the indubitable equivalent of the interest in the  
21 property. *See* 11 U.S.C. § 361. The Debtors have the burden of proving the issue of adequate  
22 protection. *See* 11 U.S.C. § 363(o)(1). The Debtors have not offered adequate protection to  
23 Hillair. If adequate protection cannot be provided, use of the cash collateral must be prohibited.  
24 *See In re Megan-Racine Assocs. Inc.*, 202 B.R. 660, 663 (Bankr. N.D.N.Y. 1996).

25 DATED: April 30, 2019

BUCHALTER, a Professional Corporation

26 By: /s/ Anthony J. Napolitano

STEVEN M. SPECTOR

27 ANTHONY J. NAPOLITANO

Attorneys for Secured Creditor

28 HILLAIR CAPITAL MANAGEMENT, LLC

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
BUCHALTER, 1000 Wilshire Blvd, Suite 1500, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*) **HILLAIR CAPITAL MANAGEMENT'S NOTICE OF NON-CONSENT TO USE OF CASH COLLATERAL BY THE DEBTOR** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) April 30, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ashley M McDow amcdow@foley.com, sgaeta@foley.com;Ffarivar@foley.com;swilson@foley.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) April 30, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor  
Scoobeez  
3463 Foothill Blvd.  
Glendale, CA 91214

Presiding Judge  
Hon. Julia W. Brand  
U.S. Bankruptcy Court – Central District of California  
Edward R. Roybal Federal Building and Courthouse  
255 E. Temple Street, Suite 1382  
Los Angeles, CA 90012

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) April 30, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 30, 2019  
*Date*

Sandra Alarcon  
*Printed Name*

/s/ Sandra Alarcon  
*Signature*